

Before the
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of:

Changes to the Board of
Directors of the National Exchange
Carrier Association, Inc.

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CC Docket No. 97-21

COMMENTS

The National Exchange Carrier Association, Inc. (NECA)¹ submits these Comments in response to the Commission's Notice of Inquiry in the above-captioned proceeding.²

SUMMARY

In the Notice of Proposed Rulemaking phase of this proceeding, the Commission sought comments on proposals to add "significant, meaningful representation" of non-incumbent local exchange carrier (LEC) interests to the NECA board of directors, so as to permit NECA to serve as temporary administrator of new universal service programs.³ In its Notice of Inquiry, the Commission now seeks comment on longer-term changes that might be needed to allow NECA

¹ NECA is a not-for-profit association, established under FCC rules, that is responsible inter alia for preparation of access charge tariffs on behalf of all telephone companies that do not file separate tariffs, collection and distribution of access charge revenues, the administration of the Commission's Universal Service and Lifeline Assistance programs, and the administration of the interstate Telecommunications Relay Service fund. See 47 C.F.R. §§ 69.603 and .604. See also 47 C.F.R. § 64.604(c)(4)(iii).

² Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 97-21, FCC 97-11 (released Jan. 10, 1997) (NPRM/NOI).

³ Id. at ¶13.

to meet the Joint Board's proposed criteria for becoming a "neutral, third-party", one that would be eligible to serve as long-term administrator of new universal service programs.⁴

On January 10, 1997, NECA submitted a proposal to create a new subsidiary universal service administration company (USAC) that would be responsible for administering new universal service programs. The proposed USAC would have a balanced, representative board that would be based on Commission recommendations and would include representation from the NECA Board and from schools, libraries and health care providers. Since the USAC's board would have "significant, meaningful representation" from non-incumbent LECs, it would be eligible to serve as temporary administrator of the Commission's new universal service programs. Under NECA's January 10, 1997 plan, the USAC would be divested from NECA when and if it is selected as permanent administrator. Thus, the USAC would also be able to meet the Joint Board's criteria for a "neutral, third-party" and should be eligible to serve as long-term administrator.

NECA itself would continue to file and defend the access charge tariffs and administer the pooling revenue distribution process. Thus, rule changes altering NECA's board composition or membership for purposes of universal service administration would not be necessary. Other changes to Commission rules regarding NECA could be considered at a later date, following resolution of Commission proceedings on universal service, access reform for rate of return LECs, and separations reform.

⁴ Id. at ¶14.

I. BACKGROUND

In its November 8, 1996 Recommended Decision in CC Docket No. 96-45,⁵ the Federal-State Joint Board recommended that the permanent administrator of new universal service support mechanisms, including its Board of Directors, (1) be neutral and impartial; (2) not advocate specific positions to the Commission in non-administration-related proceedings; (3) not be aligned or associated with any particular industry segment; and (4) not have a direct financial interest in the support mechanisms established by the Commission.

Although the Joint Board found that NECA has successfully administered the existing high cost assistance fund and the TRS fund, it declined to recommend that NECA be automatically appointed permanent administrator of new universal service funding mechanisms. The Joint Board instead recommended that the Commission take such action as necessary that would allow NECA to render itself a neutral, third-party, so that it could participate in the selection process for permanent administrator.⁶

The Commission's Notice of Inquiry in this proceeding accordingly seeks comment on how the Commission might revise its rules to remove any regulatory barriers that otherwise may prevent NECA from making itself a neutral, third party.⁷

⁵ Federal State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 96J-3 (released Nov. 8, 1996) (Recommended Decision)

⁶ Id. at ¶ 832.

⁷ NPRM/NOI at ¶14.

II. NECA's JANUARY 10, 1997 PROPOSAL

On January 10, 1997, the same day on which the NPRM/NOI was adopted and released, NECA sent a letter to Chairman Hundt regarding NECA board composition and corporate structure.⁸ NECA's January 10, 1997 Letter proposed that, immediately upon being appointed as temporary administrator of the Commission's new universal service programs, and upon being authorized to commit resources to such activities, NECA would establish a wholly-owned subsidiary, a universal service administrative company (USAC), to temporarily administer the programs. The proposed USAC would have a balanced, representative board that would be based on Commission recommendations and would include representation from the NECA Board and from schools, libraries and health care providers. As described in the letter, the USAC would have full control over administration of these programs. Necessary NECA personnel would be dedicated to the USAC, and support services would be obtained from NECA on a charge-back basis pursuant to NECA's Commission-approved cost allocation manual.

NECA's January 10, 1997 Letter explained that the USAC would also participate in any process to select a permanent administrator. When and if selected as the permanent administrator of the new Universal Service Fund, the USAC would be divested from NECA and would administer federal universal support programs, including the High Cost, Low Income, Schools, Libraries and Rural Health Care Providers and Telecommunications Relay Service Programs.

⁸ Letter of Bruce Baldwin, NECA, to Reed Hundt, Chairman, FCC, January 10, 1997 (NECA January 10, 1997 Letter). Copies of NECA's January 10, 1997 Letter were served on all parties participating in CC Docket 96-45, and a copy was filed ex parte in this proceeding on January 17, 1997.

The USAC entity could be established as the Commission saw fit. It would be a non-stock corporation and would have no membership. Its board of directors could be configured based on recommendations or appointments by the Commission.⁹

Following divestiture of the USAC entity, NECA itself would no longer have any responsibility for universal service administration, but would continue to file and defend the access charge tariffs and administer the pooling revenue distribution process, essentially as it does today. NECA would also continue to ensure compliance with the Commission's rules.

NECA's January 10 proposal received strong support from a broad cross-section of interested parties in the NPRM phase of this proceeding (which focuses on changes needed to permit NECA's appointment as temporary administrator of new universal service funding mechanisms). Comments filed in response to the Commission's NPRM recognize that NECA's experience in managing universal service support mechanisms make it highly qualified to serve as administrator of new universal service programs, and that the January 10 proposal is a reasonable way of resolving concerns about perceived bias.¹⁰

⁹ NECA's January 10, 1997 Letter proposed that necessary NECA personnel and resources to administer the universal service programs would be transferred to USAC upon its selection as permanent administrator. The Letter also suggested that the USAC entity could share support services, such as human resources and information systems, with NECA on a contractual basis in order to take advantage of existing organizational efficiencies. Maintenance of such relationships, at least for the short term, is critical to assuring that both NECA and USAC would have the necessary support capabilities, and would avoid needless expense.

¹⁰ The Personal Communications Industry Association (PCIA), for example, stated that it was "pleased that NECA has responded to concerns about the original proposal" and that "the Commission should afford interested parties an opportunity to explore and develop [NECA's] concept . . . since it appears to offer the prospect of creating a NECA entity that in fact could act as an impartial administrator of the fund." PCIA NPRM Comments at 8-9. The National Cable Television Association (NCTA) stated that "the [January 10] approach NECA offers appears to

III. DISCUSSION

A. Establishment of a USAC Entity, as Proposed in NECA's January 10, 1997 Letter, Satisfies The Commission's Goals in Both Phases of this Proceeding.

The approach suggested in NECA's January 10, 1997 Letter facilitates timely and efficient appointment of a temporary administrator for new universal service programs. It also creates a mechanism for satisfying the goals of the Commission's Notice of Inquiry, in that it would create an organization that could be eligible to serve as long-term administrator, without requiring disruptive changes to the NECA board or NECA's pooling and tariff processes.

The January 10 proposal would permit NECA to create a separate USAC entity that would be responsible for administering new universal service programs. Under this approach, the USAC, not NECA, would seek to participate in the selection process for long-term administration. NECA would continue to administer the current access charge tariffs and revenue pools. Since these activities are performed solely on behalf of incumbent LECs that participate in NECA tariffs, there is no need for the Commission to consider any changes to NECA board composition and governance at this time, at least insofar as those changes are designed to make NECA eligible to serve as long-term universal service program administrator.

be a legitimate basis" for making NECA eligible to serve as temporary administrator. NCTA NPRM Comments at 7-8. PacTel stated that it "wholeheartedly support[s] NECA" in the role of interim administrator based on the January 10 Letter and added that "NECA is making significant changes to its organizational structure [to meet FCC criteria] and has the experience and large-scale information processing and database capabilities that the Commission seeks." PacTel NPRM Comments at 1-3. US WEST also "agree[d] that the revised NECA proposal made in its January 10 letter provides a sufficient combination of neutrality and expertise to permit the modified NECA entity to both be the temporary administrator and to compete for the position of permanent administrator." US WEST at 2.

NECA's January 10 proposal did not specify any particular size or composition for the USAC entity's board of directors. NECA did, however, suggest that the Commission establish, by rule or order, a reasonable size for the board and clear procedures for determining representatives.¹¹ USAC board composition could be further enhanced as the advisory committee contemplated by the Joint Board begins its deliberations and representational needs become better defined.¹²

B. The Commission Should Defer Consideration of Other Changes to its Rules Governing NECA Pending Completion of its Proceedings on Universal Service, Access Reform and Jurisdictional Separations Reform.

The NOI also seeks comment on whether the Commission should streamline or repeal the NECA governance rules, so as to enable NECA to change the composition of its Board without unnecessary regulatory oversight. Comment is sought as well on potential changes to other Part 69 rules relating to the administration of the Common Line and Traffic Sensitive access charge pools, for example, to permit other parties to participate in a competitive bidding process for

¹¹ NECA's January 10 proposal would also include some representatives from the current NECA board, in order to assure operational continuity.

¹² For example, Ameritech questions whether the permanent universal service support administrator should have any representation from the industry or beneficiaries of the fund on its board of directors. Ameritech, NPRM Comments at 4. NECA believes, however, that there are substantial advantages in having a board with representation and expertise from all segments of the telecommunications industry, as well as representation from other interested parties such as schools, libraries and rural health care providers. A "balanced" board will be able to provide guidance on administrative issues without collectively being aligned with any particular industry segment. As the Commission considers the Joint Board's recommendations in CC Docket No. 96-45, it should clarify that this approach will, in fact, satisfy the eligibility criteria for a permanent administrator.

those functions.¹³

NECA agrees that, over the long term, the Commission should consider changes to the current Part 69 rules governing NECA. Changes in the Commission's universal service, access charge and jurisdictional separations rules, especially with regard to universal service administration, the recovery of Long Term Support amounts, and access reform for rate of return LECs, may warrant changes in the Commission's Part 69 rules relating to NECA as well. Rather than attempt to predict the effects of those changes on NECA in this proceeding, however, the Commission should defer further action until such time that related proceedings are completed.

In considering these changes, the Commission should bear in mind that, following the transfer of universal service administration to the USAC entity, NECA itself will focus on preparation and defense of access charge tariffs, the administration of the access charge revenue pools, average schedules, and participation in Commission and court proceedings relating to access charges. In this capacity, NECA is required under Commission rules and orders to act as agent for its member exchange carriers. As some commenters in the NPRM phase of this proceeding point out, changes in NECA governance, including the addition of board members representing tariff customers, could seriously compromise NECA's ability to carry out its responsibilities in this regard.¹⁴

¹³ Id. at ¶17.

¹⁴ See, e.g., LEC Associations, NPRM Comments at 5. Proposals for competitive bidding of NECA's tariff filing and access charge pool responsibilities must also take this agency relationship into account. Since NECA as tariff filing agent must be responsible to its principals, a selection process involving a third-party contracting entity may create substantial conflicts of interest. In its 1983 Access Charge Order establishing NECA, the Commission recognized these concerns, and accordingly concluded that membership in the association should be limited to

C. The Commission Should Act Soon to Appoint NECA, Through Its USAC Subsidiary, Temporary Administrator of New Universal Service Programs.

Several commenters in the NPRM phase of this proceeding voiced concerns that there will not be sufficient time to implement new universal service programs for schools and libraries, as proposed by the Joint Board. NECA believes that it will be capable of making these new programs operational on schedule, but time grows short. As some commenters pointed out, these new programs will involve many entities that are new to universal service funding mechanisms. Substantial amounts of data may need to be gathered and verified. NECA is fully capable of accomplishing these tasks, but establishing lines of communication with interested parties, understanding their needs, and developing workable administrative mechanisms will take some time.

It is essential that the Commission act soon to appoint NECA temporary administrator of new universal service programs. Concurrently, the Commission should direct NECA to establish the USAC subsidiary described in its January 10, 1997 Letter, specify parameters for USAC's governance (as discussed in NECA's NPRM Comments), and specify cost recovery procedures.¹⁵ By doing so quickly, the Commission can help assure successful and timely implementation of its new universal service programs.

exchange carriers that participate in the NECA access charge pools, and that inclusion of representation from the Commission staff, interexchange carriers or consumers could create the appearance of a conflict of interest. MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d 241, 334-35 (1983). The same concerns continue to apply to NECA in its role as tariff filing agent.

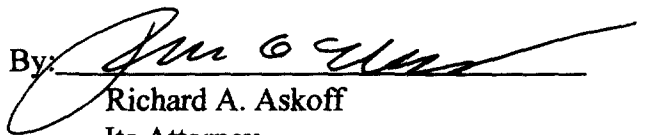
¹⁵ NECA would expect to keep separate account of costs of administering new universal service mechanisms, pursuant to NECA's Commission-approved cost manual, and recover those expenditures from initial fund collections. See NECA January 10, 1997 Letter at 1.

IV. CONCLUSION

NECA's January 10, 1997 proposal would, if adopted, permit NECA to create a new universal service administration company (USAC) that would be eligible to serve as temporary administrator of new universal service programs and eligible to participate in the selection process for a long-term administrator as well. Rule changes that would alter NECA's board composition or membership for purposes of universal service administration are, therefore, unnecessary. Other changes to the Commission's rules regarding NECA, including membership and board composition, should be considered at a later date, after the Commission finalizes proceedings relating to universal service, access reform for rate of return LECs, and jurisdictional separations reform proceedings.

Respectfully submitted,

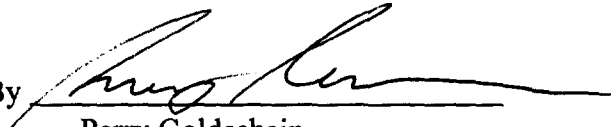
NATIONAL EXCHANGE CARRIER
ASSOCIATION, Inc.

By: 
Richard A. Askoff
Its Attorney

March 3, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments were served this 3rd day of March, 1997, by mailing copies thereof by United States Mail, first class postage paid, or hand delivery, to the persons listed below.

By 
Perry Goldschein

The following parties were served:

Office of the Secretary*
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554
(Original and 11 copies)

Tejal Mehta*
Federal Communications Commission
2100 M St., N.W., Room 8611
Washington, D.C. 20554
(5 copies)

International Transcription Services, Inc.*
2100 M Street, NW, Suite 140
Washington, DC 20037

*Hand Delivered